

IV

Michael N. Milby, Clerk

1094

((

The proposed document depository Order is the result of seven months of hard fought negotiations and it reflects compromise by all parties, who recognize that this is an expensive litigation. Mr. Kopper objects to the cost that will be incurred to generating computerized images and index responsive documents in the *Tittle* case (he has not yet been named in *Newby*). Specifically, he objects to the proposed document depository Order that would require him and other individual defendants to incur substantial costs beyond those routinely incurred by a party responding to requests for "production of documents."¹ Despite his concerns, no other party has objected to production costs in this extraordinary – far from routine – case. Mr. Kopper's objection is also myopic, because he already has the option of producing documents in hard copy under the proposed Order and because his calculation of costs is erroneous. Moreover, his objection ignores the advantages that he will enjoy, which are incalculable. Few individual defendants could afford to process millions of pages in the depository from the other parties to which Mr. Kopper will have access. Further, because his cooperation agreement with the Enron Task Force will likely restrict the volume of documents within his control, plaintiffs will have to obtain them through other means. Consequently, in contrast to most other defendants who maintain control over their own documents, the cost of bringing many, if not most, of Mr. Kopper's documents into the depository will fall upon the plaintiffs.

Mr. Kopper's reliance on Attachment A to calculate costs is erroneous. That document is *not* an "excerpt of price schedule from proposed Depository Administrator."² In fact, it appears to be an unidentified response to a bid request transmitted to numerous potential bidders in June when the parties were contemplating a very different depository than that which was finally agreed upon. Mr. Kopper also assumes that all prices quoted are *per page*, but coding and indexing are accomplished on a *per document* basis – the average document contains 5 pages – which significantly reduces the cost. And far from his 42.5 to 48.4 cents-per-page estimate for imaging and indexing, the cost for Bates stamping, imaging and objective coding, depending upon the condition of his documents,

¹Kopper Objection at 2, ¶2.

²*Id.*

(

could be as little as 5.5 cents after reimbursement from the Requesting Party. Unless Mr. Kopper intends to house his originals in the Depository, he will, at the very least, incur the cost of producing a set of numbered copies. The cost *for copies alone* depending upon the condition of the documents, is comparable to the 5.5 cent estimate above, with the cost for subjective coding dependant on the number of documents produced. Moreover, he has no obligation to utilize the services of Lex Solutio, Depository Administrator.

Mr. Kopper's remedy – individual defendants could produce hard copies to the depository – is without merit. At the very least, all documents must be numbered. Dozens of defendants producing original documents without Bates numbers would cause mass confusion and astronomical escalation of costs to all other parties. What Mr. Kopper fails to understand is that Bates numbering, objective coding and imaging are accomplished electronically at the same time – and *in lieu of paper copies*. This is much more economical than manual numbering and copying.

Finally, under §VIII.B.2 of the proposed Order, Mr. Kopper already has the option he suggests to remedy the perceived problem: he may transport all original documents to Lex Solutio (or allow Lex Solutio access to stored documents, at his option) and the Depository Administrator will prepare the documents in the Required Format for inclusion in the Depository. His originals will then be returned to him. Mr. Kopper will be reimbursed by the Requesting Party for 50% of the costs incurred, which will be substantially less than his estimate.


In sum, after months of negotiations, with the notable exception of Mr. Kopper, the proposed Order represents virtual unanimity as to the issue of costs on the protocol to gather and maintain the mountain of responsive documents. Clearly, the benefits to the many outweigh his overstated and

erroneously calculated single concern. Mr. Kopper's objection should be denied and the proposed document depository Order entered at the earliest possible convenience of the Court.

DATED: October 18, 2002

Respectfully submitted,

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
WILLIAM S. LERACH
DARREN J. ROBBINS
HELEN J. HODGES
BYRON S. GEORGIOU
G. PAUL HOWES
JAMES I. JACONETTE
MICHELLE M. CICCARELLI
JAMES R. HAIL
JOHN A. LOWTHER
ALEXANDRA S. BERNAY
MATTHEW P. SIBEN
ROBERT R. HENSSLER, JR.


G. PAUL HOWES (w/ permission)
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
STEVEN G. SCHULMAN
SAMUEL H. RUDMAN
One Pennsylvania Plaza
New York, NY 10119-1065
Telephone: 212/594-5300

Lead Counsel for Newby Plaintiffs

SCHWARTZ, JUNELL, CAMPBELL
& OATHOUT, LLP
ROGER B. GREENBERG
State Bar No. 08390000
Federal I.D. No. 3932


ROGER B. GREENBERG

Two Houston Center
909 Fannin, Suite 2000
Houston, TX 77010
Telephone: 713/752-0017

HOEFFNER & BILEK, LLP
THOMAS E. BILEK
Federal Bar No. 9338
State Bar No. 02313525
440 Louisiana, Suite 720
Houston, TX 77002
Telephone: 713/227-7720

Attorneys for *Newby* Plaintiffs

HAGENS BERMAN LLP
STEVE W. BERMAN
CLYDE PLATT
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: 206/623-7292
206/623-0594 (fax)

KELLER ROHRBACK LLP
LYNN LINCOLN SARKO
BRITT TINGLUM
DEREK W. LOESER
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Telephone: 206/623-1900
206/623-3384 (fax)

Attorneys for *Title* Plaintiffs

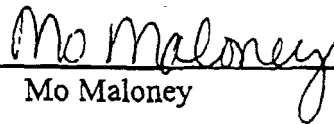
DECLARATION OF SERVICE BY WEBSITE AND UPS

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on October 18, 2002, declarant served the PLAINTIFFS' RESPONSE TO MICHAEL KOPPER'S OBJECTION TO PLAINTIFFS' JOINT MOTION TO ENTER ORDER ESTABLISHING DOCUMENT DEPOSITORY by posting to the website or UPS overnight to the parties as indicated on the attached Service List, pursuant to the Court's August 7, 2002 Order Regarding Service of Papers and Notice of Hearings.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of October, 2002, at San Diego, California.


Mo Maloney

The Service List

May be Viewed in

the Office of the Clerk